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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,367	01/23/2004	Robert B. Conner JR.	4050-0104P	4453

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EXAMINER

RIDLEY, RICHARD

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/762,367	Applicant(s) CONNER, ROBERT B.	
	Examiner Richard Ridley	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 14-20 and 32-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13, 21, 22, 24 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 11, 12, 23, 25 and 29-31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species IX, fig. 19, claims 1-13, 21-31 in the reply filed on 9-16-04 is acknowledged. The traversal is on the ground(s) that the applicant believes that Figure 18 and 19 are nothing more than the embodiments shown in Figures 13 and 14, respectively with the belt installed in each case. Thus, these are not different species or embodiments, rather just different views. This is not found persuasive because figure 18 and 19 are not of the same embodiment due to figure 19 showing different frame structure than that of figure 18, and figure 19 is a troughed conveyor belt while figure 18 shows a flat conveyor belt. Also figure 14 and figure 19 show different framing structures and are not of the same embodiment. Similarly, figure 13 & 18 show different framing structures (e.g., reference character 48 are different in each figure) and are not of the same embodiment.

Additionally, the applicant argues that some embodiments are "so" similar that they should be combined and also argues that combining of some embodiments would not be burdensome to the examiner. The examiner notes that each separate embodiment is distinct.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "frame having the full length of the car in an unextended state", as in claim 5, must be shown or the feature(s) canceled from the

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claim(s). For example, figure 1 shows that the frame is only $\frac{1}{2}$ the length of the car in the unextended state shown. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3, 13, 21, 27, 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The terms "near" & "roughly" in claims 3 & 21 are relative terms which render the claim indefinite. The terms are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "low" in claims 27 & 28 is a relative term which render the claims indefinite. The term "low" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claim 13, use of the passive voice "is pivoted" renders the claim indefinite. How is the extendible member pivoted? Or, rather, what pivots the extendible member? No structure has been recited in the claim which would allow for the pivoting function.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1, 2, 3, 4, 5, 6, 7, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall USP 5,307,917. Hall discloses a similar device comprising a(n):

- Frame (11)
- Plurality of wheels (20)
- Plurality of conveyor supports (15) mounted on frame for carrying a conveyor belt
- Extendable member (14; C2/L7-9 indicates that 14 can be rollably supported to the frame 11) attached to frame and carrying at least one of said conveyor supports thereon, the extendible member is a central shaft (relative to the frame 11), additionally re clm 6, the extendable member 14 includes two sections each having an extending portion (12, 13)
- Belt storage unit (fig. 6)

7. Claims 9, 13 as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bonnet USP 5,685,416. Bonnet discloses a similar device comprising a(n):

- Plurality of fixed supports (90; fig. 1)
- At least one car having at least one moveable support (24; support 24 supports the belt and is movable via 59)

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- Conveyor belt carrier by said fixed and movable supports
- Wheeled framework (55, 59) for supporting said movable conveyor support
- Extendable portion (26) mounted on said wheel framework

8. Claims 27, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nohl et al.

USP 6,360,876. Nohl discloses a similar device in fig. 3, the device comprising a(n):

- First conveyor belt (52)
- Second conveyor belt (fig. 3 shows second belt around pulley 59) that is below and parallel to the first conveyor belt, said second belt moving longitudinally from beneath said first belt

9. Claims 21, 22, 24, 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Nohl et al. USP 6,360,876. Nohl discloses a similar device in fig. 3, the device comprising a(n):

- Framework near the ground
- First conveyor belt (fig. 3 shows second belt around pulley 59) mounted below a second conveyor (52) and movable relative to the second conveyor
- Elevating section for increasing the height of the conveyor belt, the elevating section being movable upon said framework (the first conveyor can extend to an increasing elevation)
- Second conveyor (52) that is a car

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnet '416.

In Bonnet, the addition of additional cars would have been obvious to one having ordinary skill in the art at the time of the invention as such an arrangement would be determined by the desired longitudinal length of the conveyor.

Allowable Subject Matter

12. Claims 11, 12, 23, 25, 29, 30, 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Ridley whose telephone number is (703) 306-5910. The examiner can normally be reached on Mon-Thur 7:00 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Richard Ridley', is positioned above the printed name and date.

Richard Ridley
20 October 2004

Richard Ridley
Primary Examiner
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